

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6959 of 1999

with

CIVIL APPLICATION No. 270 of 2000

and

FIRST APPEAL No 6961 of 1999

with

CIVIL APPLICATION NO. 272 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

VASANTBHAI GOVINDBHAI PATEL H/O DECD.VIMLABEN VASANTBHAI
(IN F.A.No. 6959 of 1999)

GSRTC

Versus

NIKESHBHAI VASANTBHAI PATEL

Appearance:

1. First Appeal No. 6959 of 1999
MRS VASAVDATTA BHATT for Petitioner
MR BG JANI for Respondent No. 1, 6
 2. First Appeal No 6961 of 1999
MRS VASAVDATTA BHATT for Petitioner
MR BG JANI for Respondent No. 1, 6
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CORAM : MR.JUSTICE D.C.SRIVASTAVA and
MR.JUSTICE H.K.RATHOD

Date of decision: 28/01/2000

ORAL JUDGEMENT

(Per : Srivastava, J.)

1. These two Appeals arising out of the same accident are proposed to be disposed of by common Judgment. Ms. Vasavdatta Bhatt for the appellant and Shri B.G.Jani for the respondents have been heard. Both the Appeals are admitted. The two Appeals can be disposed of without reference to the record.

2. Brief facts essential for disposal of these Appeals are as under :

Nikesh and his mother Vimlaben were proceeding on Sarkhej - Dholera Road on scooter No.GJG 2024. The scooter was driven by Nikesh whereas his mother was pillion-rider. When they reached near Visalpur village at about 5.30 p.m. on 8.1.1989 one Bus No.GRU 7441 was going in front of the scooter No.GJG 204 driven by Nikesh. The driver of this bus suddenly applied brake. Nikesh was therefore forced to apply brake of his scooter. In the mean time scooter dashed with rear portion of the aforesaid bus. On account of this collision between the Bus and the scooter the pillion rider as well as Nikesh fell on the ground. Both sustained injuries. Mother of Nikesh succumbed to her injuries whereas Nikesh had to be hospitalised for treatment of his injuries. It is also alleged that another bus of the appellant was coming from opposite direction. The number of this bus was GRU 8005. Allegation was that drivers of both the buses were driving their vehicles rashly and negligently as a result of which the accident took place.

3. The appellant's case was that the drivers of two buses were not negligent and that Nikeshbhai was himself rash and negligent in driving his scooter. Accordingly liability to pay compensation was denied by the appellant. Alternatively it was pleaded that on the principles of joint tortfeasure and on account of contributory negligence of Nikesh the amount of compensation should be suitably reduced.

4. The Tribunal found that from the manner in which the accident took place it can hardly be said that Nikesh was in any way negligent. The Tribunal has considered oral and documentary evidence on record. On the basis of evidence it was observed by the Tribunal that at the place of accident the road was narrow and curve. Another bus was coming from the opposite direction. The driver of that vehicle gave signal to another scooterist which was trying to overtake the bus behind which Nikesh was driving his scooter. However, on account of sudden application of brake of the first bus the accident took place. There is categorical finding of the Tribunal that Nikesh cannot be held liable and he was not at all negligent in driving his scooter.

5. Learned Counsel for the appellant has argued that the Tribunal has not properly appreciated the evidence and has incorrectly recorded finding that the scooter driver was not negligent. The manner in which the accident occurred has not been disputed by the learned Counsel for the appellant. She has confined her argument only to the quantum of compensation and according to her liability of the appellant should not exceed more than 50 per cent. Shri B.G.Jani, learned Counsel, for the respondent on the other hand pointed out the manner in which the accident took place and also the serious injuries sustained by the scooter driver in which his private part was seriously damaged and he is unable to marry himself. He also pointed out that the pillion-rider was a teacher drawing salary of Rs.1330/per month from her employer.

6. We have given our conscious consideration to the submissions made by the two sides. We have also examined the Judgment of the Tribunal. We are, however, unable to give categorical finding that it was a case of absolute liability on the part of the appellant. The manner in which the accident occurred and also the place of accident where it was a narrow road and there was also a curve and another bus was coming from opposite direction and also another scooterist who was trying to overtake the bus behind which the scooter of Nikeshbhai was being

driven, it can be said that it was not a case of absolute liability. However, we are unable to agree with the Tribunal that Nikesh was not at all negligent. Since it was not a case of absolute liability we are inclined to reasonably reduce the amount of compensation. Reduction of 50 % of compensation will be too much. However, in our view, interest of justice would be met if the amount of compensation awarded by the Tribunal for the injured and the deceased is reduced by 25 per cent. In view of this conclusion the amount of compensation awarded by the Tribunal in M.A.C.P. Case No. 723 of 1989, out of which First Appeal No.6959 of 1997 arose, would be reduced to Rs.2,17,500/- and the amount of compensation in M.A.C.P. No.119 of 1990, out of which First Appeal No.6961 of 1999 arose, would be reduced to Rs.73,125/-.

7. In view of the aforesaid calculations the two Appeals are partly allowed. Amount of compensation in First Appeal No.6959/99 is reduced to Rs.2,17,500/- and that in First Appeal No. 6961 of 1999 is reduced to Rs.73,125/-. The cost and interest in the two Appeals will be proportionately reduced.

8. At this stage learned Counsel for the appellants informs that she has deposited Rs.2,85,085/- in M.A.C.P. No. 723/89 and Rs.35,890/- in M.A.C.P. No.119/90. These amounts are informed to have been paid to the claimants. The balance amount payable after above calculation shall be deposited by the appellant before the Tribunal within six weeks and after the above amount is deposited it shall be paid to the claimant proportionately as has been done with the earlier deposit.

(D. C. Srivastava, J.)

Date : January 28, 2000

(H. K. Rathod, J.)

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